

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KRISTIN BROOKS HOPE CENTER and)	
1-800-SUICIDE)	
)	CC Docket No. 95-155
Petition for Cease and Desist Order and For)	
Sanctions Against Patriot Communications)	
LLC and McLeodUSA Incorporated)	
)	
)	

**Opposition of Patriot Communications LLC to Kristin Brooks Hope Center’s Petition for
Cease and Desist Order and For Sanctions**

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Introduction

Patriot Communications LLC (“Patriot”), by its undersigned attorneys, hereby submits this Opposition to the Petition of Kristin Brooks Hope Center (“KBHC”) for Cease and Desist Order and for Sanctions (Dec. 15, 2006, as amended) (the “Petition”). For the reasons set forth herein, KBHC’s arguments are meritless and the Petition should be denied.

As an initial matter, with due regard to the public interest and the important public safety function served by the toll-free telephone numbers at issue,¹ Patriot will continue to provide service to the Toll-Free Telephone Numbers beyond January 9, 2007 and stands ready and willing to take any actions consistent with prevailing law and the Commission’s guidance that will assist in resolving any current disagreements between KBHC and the Substance Abuse and Mental Health Services Administration (“SAMHSA”).²

As explained further below, Patriot has an interest in ensuring that KBHC honors its contractual commitments to Patriot and has at all relevant times acted in the good faith belief that Patriot is the properly designated subscriber of record for the Toll-Free Telephone Numbers. In the circumstances presented, however, and particularly in light of the strong public interests at stake, Patriot does not oppose the implementation of a properly framed KBHC request for a change in either the assigned responsible organization (“Resp Org”) or the identity of the designated subscriber of record for the Toll-Free Telephone Numbers.³

¹ KBHC alleges that the following numbers are involved in this dispute: (800) 784-2433; (888) 784-2433; (877) 784-2432; (877) 838-2838; (800) 442-4673; (800) 722-9498; (800) 827-7571; (866) 771-1276; (866) 968-8454; (877) 968-8454; (888) 861-8460; (877) 495-0009; (800) 472-3457; (877) 472-3457; and (800) 773-667 (collectively, the “Toll-Free Telephone Numbers”).

² SAMHSA is a component of the U.S. Department of Health and Human Services.

³ Patriot takes its compliance with FCC Rules seriously. Patriot’s adoption of the positions expressed herein (a) is without waiver of Patriot’s position that, at all relevant times, it has acted responsibly and in accordance with law; and (b) is not intended to express any view on the merits

Background

1. Patriot is a Delaware limited liability company that provides and designs interactive services, database management, and Internet capabilities. Patriot manages a state-of-the-art communications network that supports numerous toll-free telephone numbers and hosts an array of feature-rich enhanced interactive voice response and store locator applications.

2. In or about March 2006, KBHC approached Patriot seeking a new provider for telephone call routing, crisis center database management, and telephone call result reporting services. In response to KBHC's request, on or about March 20, 2006, Patriot and KBHC entered into a services agreement (the "KBHC-Patriot Agreement"). Under the terms of the KBHC-Patriot Agreement, Patriot agreed to provide KBHC with multiple inbound toll-free telecommunications applications (the "Applications"). In brief, the Applications route telephone calls made to the Toll-Free Telephone Numbers serviced by Patriot to designated call centers based primarily on the calling party's geographic location. The geographic location of callers is determined by the 10-digit telephone number from which callers dial the Toll-Free Telephone Numbers. In exchange for Patriot's agreement to develop and support the Applications on an ongoing basis, KBHC agreed to pay Patriot valuable consideration. Specifically, KBHC agreed

of any disagreements between or among the Commission, KBHC, SAMSHA, or any other party. Among other things, Patriot is an unwilling participant in the ongoing disagreements between KBHC and SAMSHA, and has no interest in denying or interfering with any party's *bona fide* rights under the SMS/800 Tariff.

In the latter regard, KBHC's Petition was filed shortly after SAMHSA requested that the Commission reassign five of the Toll-Free Telephone Numbers to SAMHSA. *See* Public Notice, DA 06-2507 (Dec. 13, 2006). KBHC strongly opposes SAMHSA's request and has asked the Commission "to order McLeod to release KBHC's numbers immediately and allow KBHC to move them to another Resp Org." *SAMHSA Emergency Request for the Permanent Reassignment of Five Toll-Free Suicide Prevention Numbers*, CC Docket No. 95-155, Comments of the Kristin Brooks Hope Center at 14 (Dec. 20, 2006) (the "KBHC Comments"). Patriot, however, has not filed comments in response to SAMHSA's request and has not taken a position on whether the Commission should grant SAMHSA's request. If the Commission reaches the merits of SAMHSA's request, Patriot stands ready and willing to take all lawful actions, if any, that are necessary to effectuate the Commission's decision.

to pay Patriot a one-time set-up charge and monthly usage charges for the toll-free telephone numbers serviced by Patriot.

3. McLeodUSA Telecommunications Services, Inc. (“McLeod”) is a provider of integrated voice and data services including traditional local and long-distance services and is a Resp Org. In or about March 2006, in connection with the KBHC-Patriot Agreement, McLeod was authorized to become the Resp Org for the toll-free telephone numbers that Patriot agreed to support.

4. Commencing on or about March 26, 2006 and at all relevant times to the present, Patriot has diligently and competently maintained the Applications and supported the Toll-Free Telephone Numbers with the exception of a few of the Toll-Free Telephone Numbers that were either not covered by the KBHC-Patriot Agreement or have been previously transferred to another provider.

5. On or about May 11, 2006, Patriot mailed a monthly invoice to KBHC for services provided during April 2006. KBHC did not remit payment by the due date, leaving an outstanding balance of \$3,516.37 for services rendered in April 2006.⁴

6. On or about June 12, 2006, Patriot mailed a monthly invoice to KBHC for services provided during May 2006. KBHC did not remit a payment by the due date, leaving an outstanding balance of \$18,866.99 for services rendered in May 2006.

⁴ KBHC’s outstanding indebtedness to Patriot is addressed more fully in Patriot’s pending Complaint for (1) Breach of Contract; (2) Work, Labor and Services; (3) Unjust Enrichment filed in *Patriot Communications LLC v. Kristin Brooks Hope Center*, No. SC091750 (Cal. Super. Ct. Nov. 13, 2006). A true and correct copy of Patriot’s Complaint filed in the Superior Court for Los Angeles County, California (less exhibit) is attached as Exhibit A hereto.

7. On or about July 11, 2006, Patriot mailed a monthly invoice to KBHC for services provided during June 2006. KBHC did not remit a payment by the due date, leaving an outstanding balance of \$18,928.76 for services rendered in June 2006.

8. On or about August 15, 2006, Patriot mailed a monthly invoice to KBHC for services provided during July 2006. KBHC did not remit a payment by the due date, leaving an outstanding balance of \$20,600.83 for the July invoice, and bringing the total past due amount to \$51,912.95.

9. By the beginning of August 2006, there was an outstanding balance of \$41,312.12 for services Patriot provided to KBHC during the months of April through June 2006. In an effort to address KBHC's delinquency, Patriot engaged KBHC in a lengthy series of communications in which Patriot attempted to work with KBHC to bring KBHC's account current while Patriot continued to service the Toll-Free Telephone Numbers. Despite Patriot's repeated attempts to resolve the parties' payment dispute in good faith, however, KBHC is currently indebted to Patriot in the amount of \$67,897.84 plus interest and attorney's fees.⁵

10. At or about the time that the payment dispute arose between Patriot and KBHC, Patriot became aware that KBHC was engaged in discussions with SAMHSA about obtaining additional funding for some or all of the Toll-Free Telephone Numbers. *See* Petition at 4. On or about August 25, 2006, the Secretary of Health and Human Services sent a letter to the FCC requesting that the Commission reassign one of the Toll-Free Telephone Numbers to SAMHSA.⁶ Also on or about August 25, 2006, KBHC agreed to permit SAMHSA to assume control of some

⁵ KBHC has previously informed Patriot that KBHC is also indebted to its previous Applications provider, AT&T, in an amount in excess of \$100,000.

⁶ Letter from Michael Leavitt, Secretary, U.S. Department of Health and Human Services to Kevin J. Martin, Chairman, Federal Communications Commission (Aug. 25, 2006), *available at* http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518440413 (the "Leavitt Letter").

or all of the Toll-Free Telephone Numbers and SAMHSA requested that Patriot continue to maintain the Applications notwithstanding KBHC's failure to pay for services rendered, a request that Patriot has honored.⁷

11. In light of KBHC's numerous breaches of the KBHC-Patriot Agreement and KBHC's continuing failure to pay, Patriot invoked the termination provisions of the Agreement and notified KBHC in writing on or about August 15, 2006 that it would be terminating its contract with KBHC effective August 25, 2006.

12. Though KBHC asserts that KBHC is the subscriber of record for the Toll-Free Telephone Numbers, *see* Petition at 3, at all relevant times Patriot has acted in the good faith belief that, consistent with the terms of the KBHC-Patriot Agreement, Patriot is the designated subscriber of record for the Toll-Free Telephone Numbers serviced by Patriot. Particularly in light of the larger public interests at stake, however, and without waiver of Patriot's position that, at all relevant times, it has acted responsibly and in accordance with law, in the circumstances presented Patriot does not oppose the implementation of a properly framed KBHC request for a change in either the assigned Resp Org or the identity of the designated subscriber of record for the Toll-Free Telephone Numbers. As set forth above, however, Patriot's adoption of this position is not intended to express any view on the merits of any disagreements between or among the Commission, KBHC, SAMSHA, or any other party, and Patriot has no interest in denying or interfering with any party's *bona fide* rights under the SMS/800 Tariff or law.

⁷ See, e.g., Petition at 4-5; *see also SAMHSA Emergency Request for the Permanent Reassignment of Five Toll-Free Suicide Prevention Numbers*, CC Docket No. 95-155, Supplemental Petition of the U.S. Department of Health and Human Services In Support of Its Request for Reassignment of Toll Free Suicide Prevention Numbers at 8 (Dec. 20, 2006) (the "SAMHSA Supplemental Petition").

13. As the numerous filings in this docket by KBHC and SAMHSA reveal, there are ongoing disagreements between KBHC and SAMHSA regarding, among other things, whether KBHC should be permitted to port some or all of the Toll-Free Telephone Numbers to a new Resp Org,⁸ whether the Commission should authorize SAMHSA to become the subscriber of record for some or all of the Toll-Free Telephone Numbers,⁹ and whether and, if so, under what terms SAMHSA should provide KBHC with additional funding.¹⁰

Discussion

In its Petition, KBHC requests, *inter alia*, that the Commission issue (1) a Cease and Desist Order enjoining Patriot from making “knowing and intentionally false claims that it is the ‘subscriber of record’ for any of the fifteen toll free crisis and suicide prevention telephone numbers,” Petition at 1; and (2) a Notice of Apparent Liability (“NAL”) to Patriot because “Patriot has refused to port in violation of the Commission’s rules.” *Id.* at 2. For the reasons set forth above, there is no basis upon which the Commission should issue a Cease and Desist Order or NAL directed to Patriot in the circumstances presented. Indeed, KBHC’s Petition is replete with distortions and omissions that not only paint a grossly misleading portrait of Patriot’s conduct in this matter, but obfuscate KBHC’s repeated and continuing breaches of its own contractual obligations to pay for services rendered by Patriot, including KBHC’s outstanding debt to Patriot in the amount of \$67,897.84 plus interest and attorney’s fees.

Contrary to KBHC’s assertions, Patriot has never made a knowing and intentionally false claim that Patriot is the subscriber of record for the Toll-Free Telephone Numbers, *see*

⁸ See Petition at 6; *see also* Leavitt Letter at 2.

⁹ See KBHC Comments at 13; *see also* Leavitt Letter at 1.

¹⁰ See SAMHSA Supplemental Petition at 8; *see also* Leavitt Letter at 2.

Petition at 1, but at all relevant times has relied in good faith on its understanding that, consistent with the KBHC-Patriot Agreement, Patriot is the designated subscriber of record for the Toll-Free Telephone Numbers. Nevertheless, in the circumstances presented, and particularly in light of the strong public interests at stake, Patriot does not oppose the implementation of a properly framed KBHC request for a change in either the Resp Org or the identity of the designated subscriber of record. Patriot adopts this position without waiver of Patriot's position that, at all relevant times, it has acted responsibly and in accordance with law, and Patriot's position is not intended to express any view on the merits of any disagreements between or among the Commission, KBHC, SAMSHA, or any other party.

Moreover, despite KBHC's delinquency and the current disagreements between KBHC and SAMHSA, Patriot recognizes the strong public interest in the maintenance of database applications for and service to the Toll-Free Telephone Numbers and stands ready and willing to continue to support the Applications while the dispute between KBHC and SAMHSA is resolved.¹¹

Conclusion

For the reasons set forth herein, KBHC's Petition should be denied. Subject to further guidance from the Commission, Patriot stands ready and willing to support the Applications for

¹¹ In the event that the current disagreements between KBHC and SAMHSA are not resolved and business considerations compel Patriot to reconsider whether it can continue to support the Applications given that the KBHC-Patriot Agreement has terminated and KBHC owes Patriot substantial sums pursuant to the KBHC-Patriot Agreement, Patriot will provide the FCC, SAMHSA, KBHC and McLeod with at least 30 days advance written notice of its intent to terminate further support for the Applications.

Patriot's positions are, of course, without prejudice to or waiver of Patriot's rights under the terms of the KBHC-Patriot Agreement or otherwise. *See* Complaint attached as Exhibit A hereto. Moreover, while Patriot believes that KBHC's Petition is meritless as a matter of law and equity, in the event that the Commission takes any steps toward granting any of the relief sought in KBHC's Petition, Patriot reserves all of its rights and respectfully requests an opportunity to respond more fully to KBHC's allegations at the appropriate time.

the Toll-Free Telephone Numbers in the public interest and to discharge its obligations to the Commission and to the parties consistent with prevailing law.

Respectfully submitted,

/s/ Suzanne Yelen

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Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Federal Communications Commission via the FCC's electronic comment filing system on January 3, 2007 and by first-class mail on the following individuals:

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Exhibit A

FILED

LOS ANGELES SUPERIOR COURT

NOV 13 2006

JOHN A. CLARKE, CLERK

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
WEST DISTRICT**

PATRIOT COMMUNICATIONS LLC, a
Delaware Limited Liability Company,

Plaintiff,

vs.

KRISTIN BROOKS HOPE CENTER, a
California Non-Profit Corporation, and
DOES 1 to 25, inclusive

Defendants.

CASE NO.

SC091750

COMPLAINT FOR (1) BREACH OF
CONTRACT; (2) WORK, LABOR AND
SERVICES; (3) UNJUST
ENRICHMENT

UNLIMITED CIVIL CASE (AMOUNT
DEMANDED EXCEEDS \$25,000)

INITIAL CASE MANAGEMENT REVIEW
AND CONFERENCE FEB 27 2007

PATRICIA L. COLLINS

Plaintiff Patriot Communications LLC alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Patriot Communications LLC ("Patriot") is a Delaware limited liability company duly licensed to do business in the State of California with its principal place of business in Los Angeles, California. Patriot is a provider of interactive telecommunications services, database management, and Internet capabilities.

COMPLAINT FOR (1) BREACH OF CONTRACT; (2) WORK, LABOR AND SERVICES; (3) UNJUST ENRICHMENT

1 2. Patriot alleges upon information and belief that Defendant Kristin Brooks Hope
2 Center ("KBHC") is a California non-profit corporation duly licensed to do business in the
3 State of California.

4 3. Patriot is unaware of the true names and capacities of the defendants sued in this
5 action as Does 1 through 25 and therefore sues these defendants by such fictitious names.
6 Patriot alleges upon information and belief that at all times mentioned in this Complaint, each
7 of the Doe defendants was responsible in some manner for the acts, omissions, and occurrences
8 alleged in this Complaint and Patriot's damages were proximately caused by these acts,
9 omissions and occurrences. Patriot will amend this Complaint to allege the true names and
10 capacities of the Doe defendants after Patriot ascertains their true names. Wherever this
11 Complaint alleges that any breach, act or omission was done or committed by a specifically
12 named defendant, Patriot intends to allege and does allege at this point that each and every Doe
13 defendant did and committed the same breach, act or omission.

14 4. Patriot alleges upon information and belief that at all times mentioned in this
15 Complaint, each defendant was the principal, agent, employee, representative, joint venturer or
16 partner of each or all of the other defendants and was acting or was being acted for within the
17 scope and authority of such agency, employment, representation, joint venture or partnership
18 while doing or omitting to do the acts alleged in this Complaint and with the permission
19 approval, consent and ratification of all other defendants.

20 5. In or about late March, 2006, KBHC and Patriot entered into a written services
21 agreement contract ("Contract"), a true and correct copy of which is attached hereto as Exhibit
22 "A" and incorporated herein by this reference. The effective date of the Contract was March
23 20, 2006 ("Effective Date"), with an initial term of twelve (12) consecutive months.

24 6. Under the terms of the Contract, Patriot agreed to provide KBHC with multiple
25 inbound toll-free telecommunications applications ("Services") that allow callers
26 contemplating suicide to be routed to a local crisis center for appropriate referrals to support
27 services in the local community.
28

1 7. In addition to certain one-time set-up charges, the Contract states that Patriot
2 would invoice KBHC on a monthly basis ("Monthly Invoice") for the usage charges on the
3 toll-free telephone numbers serviced by Patriot ("Monthly Charges").

4 8. Through the Contract, KBHC agreed to pay the Monthly Charges in full upon
5 receipt of a Monthly Invoice, and no later than thirty (30) days after the invoice date set forth
6 on each Monthly Invoice ("Due Date").

7 9. Patriot began providing Services to KBHC under the Contract in or about late
8 March 2006.

9 10. Pursuant to the Contract, on or about May 11, 2006, Patriot mailed a Monthly
10 Invoice to KBHC for Services provided during April 2006 (the "April Invoice"). The April
11 Invoice showed Monthly Charges of \$3,615.63. Included in this amount was a Federal tax of
12 \$99.26, which KBHC did not have to pay. Thus, the total amount owing on the April Invoice
13 was \$3,516.37. KBHC did not remit payment by the Due Date, leaving an outstanding balance
14 of \$3,516.37 for the April Invoice.

15 11. On or about June 12, 2006, Patriot mailed a Monthly Invoice to KBHC for
16 Services provided during May 2006 (the "May Invoice"). The May Invoice showed Monthly
17 Charges of \$19,406.95. Included in this amount was a Federal tax of \$539.96, which KBHC,
18 did not have to pay. Thus, the total amount owing on the May Invoice was \$18,866.99.
19 KBHC did not remit a payment by the Due Date, leaving an outstanding balance of \$18,866.99
20 for the May Invoice.

21 12. On or about July 11, 2006, Patriot mailed a Monthly Invoice to KBHC for
22 Services provided during June 2006 (the "June Invoice"). The June Invoice showed Monthly
23 Charges of \$18,928.76. KBHC did not remit a payment by the Due Date, leaving an
24 outstanding balance of \$18,928.76 for the June Invoice.
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1 13. By the beginning of August 2006, there was an outstanding balance of
2 \$41,312.12 for Services Patriot provided to KBHC during the months of April through June
3 2006.

4 14. On or about August 2, 2006, Patriot sent a letter, via Federal Express, facsimile
5 and email, to KBHC ("August 2 Letter"), notifying KBHC that, pursuant to the termination
6 clause in the Contract, Patriot was giving KBHC ten (10) days' written notice of termination of
7 the Contract based upon KBHC's failure to resolve the past due balance of \$41,312.12. The
8 August 2 Letter stated that Services would be terminated on August 12, 2006 (the
9 "Termination Date"). Patriot also demanded that KBHC immediately pay the entire past due
10 amount.

11 15. On or about August 10, 2006, KBHC's president, Reese Butler, emailed Patriot's
12 President and Chief Operating Officer, Doug Livingston, to request a two-week extension of
13 the Termination Date. Mr. Butler explained that KBHC was busy raising money to pay off the
14 past due amount it owed Patriot and was looking for a way to avoid having the toll-free
15 telephone numbers turned off. In return for Patriot granting a two-week extension of the
16 Termination Date, Mr. Reese stated that KBHC would wire a \$10,000 payment on August 11,
17 2006.

18 16. Later in the evening on August 10, 2006, Mr. Livingston, responded via email to
19 Mr. Reese's request for an extension of the Termination Date. Mr. Livingston stated that if
20 KBHC wired \$10,000 to Patriot by the end of business on August 11, 2006, Patriot would
21 extend the Termination Date by two weeks to August 26, 2006 (the "Revised Termination
22 Date").
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24 17. On August 11, 2006, KBHC wired a payment of \$10,000 to Patriot (the "Wire
25 Payment"). As described above, at the time of the Wire Payment, there was a past due amount
26 of \$41,312.12, which represented the outstanding balances for Services provided during the
27 months of April through June 2006. After applying the Wire Payment to this past due amount,
28 a total of \$31,312.12 remained past due.

1 18. On or about August 15, 2006, Patriot sent a letter, via Federal Express, facsimile
2 and email, to KBHC (the "August 15 Letter"), giving KBHC ten (10) days' written notice that
3 Patriot would terminate the Contract on August 26, 2006 – the Revised Termination Date.

4 19. Included with the August 15 Letter, was a Monthly Invoice dated August 10,
5 2006 for Services provided during July 2006 (the "July Invoice"). The July Invoice showed
6 Monthly Charges of \$20,600.83. KBHC did not remit a payment by the Due Date, leaving an
7 outstanding balance of \$20,600.83 for the July Invoice, and bringing a total past due amount of
8 \$51,912.95.

9 20. The August 15 Letter also stated that, pursuant to the Contract and in light of
10 KBHC's payment default, Patriot was changing the payment terms for further Services it
11 provided. Patriot estimated the charges for the period of August 1, 2006 through the Revised
12 Termination Date would be \$16,600. Accordingly, in the August 15 Letter, Patriot demanded
13 that KBHC immediately remit the sum of \$68,000, which was the approximate sum of the
14 \$51,912.95 remaining unpaid for the months of May through July 2006 and the \$16,600
15 estimated Monthly Charges for the period of August 1, 2006, through the Revised Termination
16 Date.

17 21. On August 21, 2006, Mr. Reese emailed Mr. Livingston and stated that KBHC
18 was pulling together the \$68,000 it owed Patriot, and planned to wire that amount to Patriot's
19 bank by 5:00 p.m. on August 25, 2006. However, KBHC did not submit any payment to
20 Patriot by August 25, 2006, or any time thereafter.

21 22. On or about September 12, 2006, Patriot mailed a Monthly Invoice to KBHC for
22 Services provided during August 2006 ("the August Invoice"). The August Invoice showed
23 Monthly Charges of \$15,984.89. KBHC did not remit a payment by the Due Date, leaving an
24 outstanding balance of \$15,984.89 for the August Invoice, and bringing a total past due amount
25 of \$67,897.84.
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1 23. KBHC did not make, and has not made, any payment towards the past due
2 amount of \$67,897.84.

3 24. As described more thoroughly above, KBHC failed to comply with the
4 Contract's payment terms by not making timely payments toward the April, May, June, July
5 and August Invoices. An outstanding balance of \$67,897.84 remains for Services Patriot
6 provided to KBHC during the months of May through August 2006. KBHC not only has not
7 disputed that amount, it has acknowledged that it owes Patriot this money. Yet, despite
8 Patriot's repeated demands to KBHC for payment, KBHC has not made any payments to
9 Patriot since August 11, 2006.

10 **FIRST CAUSE OF ACTION**

11 (Breach of Contract – Against All Defendants)

12 25. By this reference, Patriot incorporates paragraphs 1 through 24 of this Complaint
13 as though they were fully set forth at this point.

14 26. In or around late-March 2006, Patriot and KBHC entered into the Contract.

15 27. The Contract states that "[t]he prevailing party(ies) to this Agreement shall be
16 entitled to recover from the unsuccessful party(ies) to this Agreement all costs, expenses and
17 actual outside attorney's fees relating to or arising from the enforcement or interpretation of, or
18 any litigation, arbitration or mediation relating to, or arising from, this Agreement."
19

20 28. Patriot has performed all conditions, covenants and promises required on its part
21 to be performed in accordance with the terms and conditions of the Contract. Per the terms of
22 the Contract, Patriot provided toll-free telephone number services to KBHC and billed KBHC
23 on a monthly basis for these Services requesting payment within thirty (30) days of the
24 invoices dates, thereby requesting that KBHC perform its obligations under the Contract.

25 29. In or about June 2006, KBHC breached the terms of the Contract by failing to
26 submit full payment within thirty (30) days of the May Invoice. KBHC has not paid the May
27 Invoice in full. Instead, a balance of \$12,383.36 remains past due on the May Invoice.
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1 30. In or about July 2006, KBHC breached the terms of the Contract by failing to
2 submit full payment within thirty (30) days of the June Invoice. KBHC has not remitted a
3 payment for the June Invoice. Instead, a balance of \$ 18,928.76 remains past due on the June
4 Invoice.

5 31. In or about August 2006, KBHC breached the terms of the Contract by failing to
6 submit full payment within thirty (30) days of the July Invoice. KBHC has not remitted a
7 payment for the July Invoice. Instead, a balance of \$ 20,600.83 remains past due on the July
8 Invoice.

9 32. In or September 2006, KBHC breached the terms of the Contract by failing to
10 submit full payment within thirty (30) days of the August Invoice. KBHC has not remitted a
11 payment for the August Invoice. Instead, a balance of \$ 15,984.89 remains past due on the
12 August Invoice.

13 33. As a result of above-described breaches by KBHC, Patriot has been damaged in
14 the sum of \$67,897.84, which represents the unpaid Charges for Services Patriot provided to
15 KBHC during the months of May through August 2006.

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17 **SECOND CAUSE OF ACTION**

18 (Work, Labor and Services – Against All Defendants)

19 34. By this reference, Patriot incorporates paragraphs 1 through 24 and 26 through
20 33 of this Complaint as though they were fully set forth at this point.

21 35. During the months of March through August 2006, Patriot became indebted to
22 KBHC in the agreed sum of \$80,022.84 for work, labor and services performed by Patriot at
23 the request of KBHC.

24 36. Patriot has repeatedly demanded full payment from KBHC. The last demand
25 was made on or about October 10, 2006. Despite the numerous demands for full payment,
26 KBHC has paid only \$12,125.00 to Patriot, leaving a balance due of \$67,897.84, with interest
27 on that amount at the legal rate from and after September, 2006.
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THIRD CAUSE OF ACTION

(Unjust Enrichment – Against All Defendants)

37. By this reference, Patriot incorporates paragraphs 1 through 24, 26 through 33, and 35 through 36 of this Complaint as though they were fully set forth at this point.

38. KBHC has received the use and benefit of the Services provided by Patriot. KBHC has not paid Patriot in full for the Services. KBHC has therefore been unjustly enriched at the expense of Patriot in the sum of \$67,897.84, together with interest thereon at the legal rate from and after September, 2006.

PRAYER

WHEREFORE, Patriot prays for judgment against KBHC as follows:

On ALL CAUSES OF ACTION:

1. For a sum of \$67,897.84;
2. For pre-judgment and post-judgment interest on the damages at the legal rate;
3. For reasonable attorneys' fees in accordance with the Contract;
4. For costs of suit incurred herein; and
5. For such other and further relief as this Court may deem just and appropriate.

Dated: November 9, 2006

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By: 

Lee E. Hejmanowski, Esq.

Jason M. Santana, Esq.

Attorneys For Plaintiff Patriot Communications,
LLC.